

MEMORANDUM

November 29, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MARK WEINSTEIN
Veatch, Carlson, Grogan, and Nelson

ROGER H. GRANBO
Principal Deputy County Counsel
General Litigation Division

RE: **Jorge Marin v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 301220

DATE OF
INCIDENT: December 19, 2002

AUTHORITY
REQUESTED: \$300,000

COUNTY
DEPARTMENT: Public Library

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☒

Recommend to Board of
Supervisors for Approval


ROCKY A. ARMFIELD

, Chief Administrative Office


JOHN F. KRATTLI

, County Counsel


MARIA M. OMS

, Auditor-Controller

on December 20, 2004

SUMMARY

This is a recommendation to settle for \$300,000, a lawsuit filed by Jorge Marin for injuries he sustained when he was forcefully removed from a County Public Library by a Public Library employee.

LEGAL PRINCIPLES

A public entity is liable for the negligent and intentional acts of its employees when the acts are done in the course and scope of employment.

A person has the right to use reasonable force in self defense. If a person uses more force than is required to defend himself, he may be liable for battery.

SUMMARY OF FACTS

On December 19, 2002, Jorge Marin was using the public computer terminal at the Montebello Library. The Library's policy limits a patron's use of the computer to two hours per day. Jorge Marin exceeded the two hour limit and was asked to end his session as other patrons were waiting to use the computer. Mr. Marin refused.

After Mr. Marin refused to end his session on the computer, a Library employee reached to turn off the computer and Mr. Marin struck him in the stomach. The employee picked up Mr. Marin in a bear hug, and escorted him from the library. As they exited the library, the employee let go of Mr. Marin who then fell down on the concrete surface outside the library. A witness testified that it appeared that the employee threw Mr. Marin to the ground.

Mr. Marin suffered blunt head trauma to the right side of his head, a laceration to the right side of his head, and was bleeding from the right ear. He was taken to the hospital by ambulance. He was later diagnosed with partial hearing loss in his right ear, tinnitus (ringing in the ear), a left front brain hemorrhage, and soft tissue swelling of the brain.

DAMAGES

Should this matter proceed to trial, the potential damages could be as follows:

Medical expenses	\$158,000
Pain and suffering	<u>\$500,000</u>
Total	<u>\$658,000</u>

The proposed settlement calls for the County to pay Jorge Marin \$300,000 for all of his claims for damages, costs, and attorney fees.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

Expenses incurred by the County in defense of this matter are attorney fees of \$16,837 and \$48,123 in costs. The costs in this case are relatively high. Our attorneys retained numerous medical experts to review Mr. Marin's medical records, and to examine him to determine the extent of his injuries, many of which were disputed.

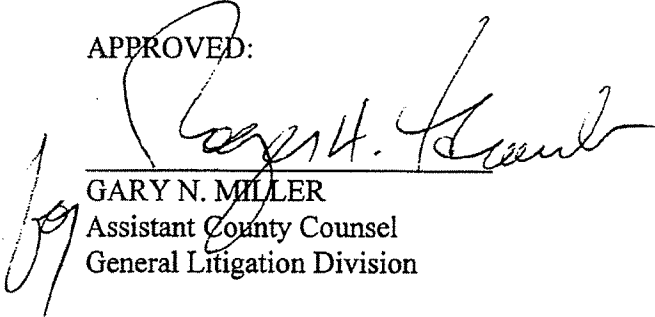
EVALUATION

This is a case of contested liability. The Library employee was struck by Mr. Marin, and was acting in self defense when he picked up Mr. Marin in a bear hug. In addition, Mr. Marin had a history of disruptive behavior at the Public Library. However, based on the testimony of the independent witness who testified that it appeared the employee threw Mr. Marin to the ground, a jury could conclude that the employee used more force than was necessary to remove Mr. Marin from the Library.

A reasonable settlement at this time will avoid further litigation costs and a jury verdict that could exceed the proposed settlement.

We join with our private counsel, Veatch, Carlson, Grogan, and Nelson, and our third party administrator, Carl Warren and Company, in recommending a settlement in the total amount of \$300,000. The Public Library concurs in this recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

GNM:RHG:scr

COUNTY OF LOS ANGELES PUBLIC LIBRARY

CORRECTIVE ACTION REPORT

Lawsuit of Jorge Marin V. County of Los Angeles, et al

RISK ISSUE

The County of Los Angeles Public Library is liable for the conduct of its employees acting within the scope of their employment. In this case, a part-time, temporary employee at the Montebello Library allegedly approached plaintiff because he exceeded his time using a public Internet access computer. When the plaintiff did not sign off after employee asked him to end his session so that other patrons could use the terminal, employee reached over the plaintiff and manually shut off the computer terminal, ending plaintiff's Internet session. Plaintiff allegedly pushed or punched employee in the abdomen. Employee had previously undergone kidney replacement surgery in the area where he was struck by plaintiff. After being struck, employee immediately restrained plaintiff and escorted him outside where he released plaintiff. Plaintiff fell after being released by employee and suffered a laceration to the right temporal region of his head, and was bleeding from the right ear. Paramedics and police were called and plaintiff was taken to the hospital. A witness located outside the library claims that employee forcibly threw plaintiff to the ground once they had exited the building. Employee claims he did not throw plaintiff to the ground.

The Department previously provided all supervisors with Workplace Violence Training. However, the library manager and employee's supervisor at the Montebello Library had not yet provided the training to their part-time, temporary employees. Although the employee was physically assaulted by plaintiff, the lack of training resulted in the employee's improper handling of the situation. This fact, and the statement of the only witness to the incident outside the library, expose the Department to legal liability.

BACKGROUND

Jorge Marin, plaintiff, was a regular patron of the library. He was born in Mexico City on December 2, 1977 and immigrated to the U. S. in 1996. On December 19, 2002 plaintiff used the public computer terminal at the Montebello Library to access the Internet. The Library's policy limits patrons' use of the Internet to two hours per day. On this date plaintiff abused the computer use policy by disabling the timer mechanism and staying on the computer in excess of the two hours allowed by the

Department. Other patrons were waiting to use the computer terminal. When informed that he exceeded his time limit on the computer and asked to end his session, plaintiff refused.

Plaintiff denied pushing or striking employee. He contends that employee grabbed him in a headlock around the neck. Once outside the library, plaintiff claims he was thrown against the wall where he struck the back of his head. He fell to the sidewalk, striking his right ear. He lost consciousness and awoke three days later in the hospital.

The Department has documentation that Plaintiff was known to be verbally abusive and physically intimidating to library workers and patrons in the Montebello and other Los Angeles County libraries. Plaintiff's library/computer privileges had been suspended on previous occasions because of his disruptive, abusive and intimidating behavior.

Javier Arrellano, employee, was hired as a Library Aid at the Montebello Library on May 17, 2001. He was hired, and continues to be assigned, as the Internet Aid because of his knowledge of computers. He is assigned to make reservations for patrons to use the computers, trouble shoot computers if any technical problems occur, show patrons how to use the computers and monitor patrons' time on and use of computers. According to employee's personnel record and supervisor, he has had no reported performance or disciplinary problems, nor have any patron complaints been filed against employee. Employee has received a number of customer service awards for his helpfulness from Internet patrons. Subsequent to the December 19, 2002 incident, the employee filed a Workers' Compensation claim for an injury sustained because he was struck by the plaintiff. Employee remained in his same position and was not released at the advice of County Counsel.

A thorough investigation of the December 19, 2002 incident was conducted by Library Human Resources staff and the Montebello Police. Witness statements corroborated employee's account of the incident in the library. Based on conflicts between the statements of the plaintiff, employee and witness regarding the incident outside the library, no charges were filed against any of the involved parties.

CORRECTIVE ACTION

In light of the lawsuit, the County of Los Angeles Public Library has implemented the following corrective action:

I. Staff Training

- A.** All Montebello Library permanent and temporary employees who did not previously attend Workplace Violence/Personal Safety Training attended the training on February 11, 2003. This included the employee involved in the incident with the plaintiff.
- B.** New and current staff in all libraries have been required to attend the following training:

 - Workplace Violence/Personal Safety
 - Excel Customer Service
 - ADA Awareness
 - Building Emergency
 - CPR and First Aid
 - Injury and Illness Prevention
- C.** A training meeting was held with all Library managers and supervisors on May 8, 2003 at the Santa Clarita Sports Center Complex. Training was provided on Workplace Violence and Security Incident Reporting by staff from the Los Angeles County, Office of Security Management. The training included the proper handling and reporting of incidents involving irate customers.

II. Employee Discipline/Corrective Action

- A.** The Montebello Library Community Library Manager (CLM) was immediately counseled for not ensuring that all part-time, temporary employees received Workplace Violence/Personal Safety Training in a timely manner. She was also warned that she would face severe disciplinary action should any similar incidents occur in the future. The incident was also documented in her performance evaluation, and she was given instructions on future expectations regarding training and reviewing policies and procedures with all employees in a timely manner.
- B.** The CLM immediately met with the part-time, temporary staff supervisors, reviewed proper procedures for handling difficult customers and counseled them concerning their responsibilities to train their staff in a timely manner. They were also notified that they could be subject to disciplinary action in the future for related incidents.

- C. The employee was immediately counseled and given instructions on the correct procedures to follow when dealing with irate customers.

III. Policies Review

- A. Since the December 19, 2002 incident, the following policies have been reissued department-wide by Human Resources Development for review by all Library managers, supervisors and employees:

- Threat Management
- Temporary Restraining Order
- Security Incident Reporting
- Inappropriate Employee Conduct Toward the Public
- Misconduct and Impropriety

- B. The Montebello Library CLM has ensured that the above policies have been reviewed with all permanent staff during her regular monthly staff meetings. She has also reviewed the Weapons in the Workplace Policy and Injury and Illness Prevention Program with the staff and made it clear that failure to follow proper procedures will result in disciplinary action. In addition, she has ensured that all of the policies are reviewed in a timely manner with all part-time, temporary employees by their supervisors by having the employees sign a list verifying that they have reviewed the policies.

IV. Safety Awareness and Emergency Preparedness

The CLM has taken the following action:

- developed controls to ensure all permanent and temporary employees receive Workplace Violence/Personal Safety and Excel Customer Service training
- verified that all new/updated policies and procedures have been reviewed by all permanent and temporary employees
- completed the semiannual safety checklists
- updated evacuation plans and conducted a drill
- renewed her CPR and first-aid certification
- prepared timely performance evaluations, which include evaluating employees' observance of safety rules.